RECORD AND BRIEFS

No. 22O141, Original

Supreme Court, U.S.
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In The
Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF NEW MEXICO and
STATE OF COLORADO,

Defendants.

On Motion For Leave
To File Bill Of Complaint

SUPPLEMENTAL BRIEF IN OPPOSITION

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COMES NOW the State of Colorado by and through counsel pursuant to invitation of the Court to submit this Supplemental Brief in Opposition to the Motion for Leave to File Bill of Complaint ("Motion") submitted by the State of Texas in this matter, No. 141, Original.

ARGUMENT

The United States has filed a brief at the invitation of the Court in which it suggests the Court accept the Complaint, allow New Mexico to file a motion in the nature of a motion to dismiss, and retain the case for disposition of threshold legal issues before possibly assigning a Special Master.

Colorado does not agree that the Complaint reasonably alleges a violation of the Río Grande Compact ("Compact"). 53 Stat. 785, codified at C.R.S. § 37-66-101 (2012). The United States acknowledges that the Compact requires New Mexico to deliver water to Elephant Butte Reservoir. Brief for the United States as Amicus Curiae at 1, 7 ("U.S. Brief"). The Bureau of Reclamation constructed Elephant Butte Reservoir as part of the Río Grande Project ("Project"). Río Grande Project Act of February 25, 1905, ch. 789, 33 Stat. 814. U.S. Brief at 4. The United States asserts that the Project operates with an appropriated water right in New Mexico. *Id.* Further, the Project allocates water by contract to Elephant Butte Irrigation District ("EBID") and El Paso County Water Improvement District No. 1 ("EPCWID"). U.S. Brief at

4-5. It also recognizes that the Compact does not contain any terms allocating water between EBID and EPCWID. U.S. Brief at 14. Colorado is not now expressing a view on whether the Complaint adequately alleges a controversy between the states, but it cannot see an alleged injury based on the terms of the Compact. See, U.S. Const. Art. III, § 2, Cl. 2; 28 U.S.C. § 1251(a).

Moreover, Colorado has concerns with some of the statements made by the United States about the Compact and its potential relationship with the Project. Colorado does not view the invitation to file a supplemental brief as an offer to argue all the relevant points of the Compact or the Complaint. Rather, Colorado urges the Court to recognize that the views of the United States are not determinative of the Compact.

If the Court accepts the Complaint, Colorado agrees with the suggestion that this Court should retain the matter in order to decide threshold legal issues. As the home of nine interstate water compacts, Colorado believes that litigation regarding compacts should be narrow in scope. Because the nature of the allegations remain unclear, it is important to Colorado to clarify the extent to which the Complaint is based on the Compact or other interstate controversy. Keeping the matter before this Court would help to focus the nature of Texas' dispute and save substantial resources of the states, the United States, and this Court by eliminating consideration of nonessential issues.

Colorado requests that it be granted the ability to fully participate in any motion in the nature of a

motion to dismiss. Because Colorado is a party to the Compact, it has a genuine interest in its interpretation. The United States has made several statements in its brief that concern Colorado and may adversely impact Colorado's rights and obligations under the Compact. Participation will ensure that Colorado's position, which is not adequately represented by any other party, is heard.

CONCLUSION

Because the Complaint remains ill-defined, if the Court accepts the Complaint, Colorado agrees that this Court should retain this matter for disposition of a motion in the nature of a motion to dismiss before assigning a Special Master. Colorado requests leave to fully participate in a motion to dismiss. Until Texas clearly asserts a violation of the terms of the Río Grande Compact, Colorado does not support Texas' Motion on the basis of a compact controversy.

Respectfully submitted,

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